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S.B. CIVIL MISC. APPEAL NO.1001/2006.
(Smt. Kanchan & Ors. Vs. Madan Lal & Ors.)

Date of Order :: 12th February 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. K.R. Choudhary, for the appellants.

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On 23.01.2007 while considering this appeal preferred by the claimants for enhancement over the amount of compensation, this Court passed the following order:-

> "Having examined the record and the impugned award, learned counsel for the claimant-appellant was posed a question if the appellants are ready to implead wife of the deceased said to have contracted second marriage as party to this appeal; and as to whether the appellants are ready to share the amount of compensation already awarded by the Tribunal and, enhancement, if any is considered in this appeal?
>
> Learned counsel for the appellants prays for some time to complete his instructions.
>
> List this matter on 12.02.2007."

Today, learned counsel Mr. K.R. Choudhary appearing for the appellants on instructions submits that so far impleadment of the wife of the deceased is concerned, the appellants may not have objection but the appellants are not

ready to share the amount already awarded by the Tribunal and might share the enhanced amount, if enhancement is allowed in appeal.

The vehicular accident victim Santosh Kumar, son of the claimant-appellants was about 25 years in age and was married to Smt. Manju who was initially joined as claimant No.1 in the Claim Application but 13.07.2000 submissions were made in her regard that she has gone to her parents and contracted second marriage. The Tribunal has of course not permitted her to be made a non-applicant but has thereafter never looked at her rights even if she has left the company of the parents of the deceased and even if she has contracted second marriage as alleged.

The Tribunal, for the purpose of quantification of compensation has put an estimate on the income of the deceased at Rs.2,100/- per month as minimum wages and has taken contribution for the claimants, parents of the deceased at Rs.1,400/- i.e. two-third of the estimated income and then, with application of multiplier of 15, has assessed pecuniary loss at Rs. 2,52,000/- and allowing Rs.2,000/- towards funeral expenses has made award of compensation in the sum of Rs.2,54,000/- in favour of the claimant-appellants and has also allowed interest @ 6% per annum from the date of passing of the award.

The proposition about awarding of interest only from the date of award in the present case seems erroneous but when view in the context of other errors committed by the Tribunal, this Court is of opinion that the ultimate award made by the Tribunal in favour of the appellants stands rather on the higher side ruling out any scope for enhancement at the instance of the appellants.

As noticed above, the Tribunal has proceeded to ignore altogether the rights of the wife of the victim and has taken up consideration of the entire claim application for the purpose of the parents of the victim only and has yet taken entire of the two-third of the estimated income of the victim towards loss of contribution for the parents. In the circumstances of the case and in view of the fact that the wife of the victim was alive, entire of two-third of the estimated income of the deceased could not have been taken towards loss of contribution for the parents. Application of multiplier of 15 also appears to be rather on the higher side when the age of the father of the victim is shown at 52 years and that of the mother at about 44 years.

In the overall circumstances of the case, though the Tribunal has restricted on awarding interest and has also not awarded any amount towards non-pecuniary loss, yet the

ultimate amount awarded in favour of the appellants stands on higher side and rules out any scope for enhancement. Moreover, the stand of the appellants towards the wife of deceased does not inspire confidence.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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